

100-03-265

STAMP AND RETURN

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VIA COURIER

FCC/MELLON DEC 23 2003

December 23, 2003

Federal Communications Commission
Wireline Competition Bureau – CPD – 214 Appls
P.O. Box 358145
Pittsburgh, PA 15251-5145

Re: *Touch America, Inc (Debtor-In-Possession) and Qwest Communications Corporation*
Domestic Section 214 -- Application for Authority for Qwest Communications Corporation to Purchase Switching Equipment from Touch America, Inc. (Debtor-In-Possession)

Dear Sir or Madam

Pursuant to Section 214 of the Communications Act, 47 U.S.C. § 214, and Sections 63.03-63.04 of the Commission's rules, 47 C.F.R. §§ 63.03-63.04, attached please find an original and five copies of the above-referenced application. Applicants request streamlined processing.

Enclosed is the FCC Form 159 and check for the appropriate filing fee of \$860.00. Please contact the Andrew Crain at Qwest at (303) 672-2629 or the undersigned if you have questions concerning this application

Respectfully submitted,



Kenneth D. Patrich
Robert G. Morse

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION

Approved by OMB

3060-0589

Page No 1 of 1

REMITTANCE ADVICE
STAMP AND RETURN

(1) LOCKBOX #

358145

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Wilkinson Barker Knauer, LLP

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

860.00

(4) STREET ADDRESS LINE NO 1

2300 N Street, NW

(5) STREET ADDRESS LINE NO 2

Suite 700

(6) CITY

Washington

(7) STATE

DC

(8) ZIP CODE

20037

(9) DAYTIME TELEPHONE NUMBER (include area code)

(202) 783-4141

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

0003-7757-31

(12) PAYER (TIN)

521264167

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B

IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

Qwest Communications Corporation

(14) STREET ADDRESS LINE NO 1

1801 California Street, #3800

(15) STREET ADDRESS LINE NO 2

(16) CITY

Denver

(17) STATE

CO

(18) ZIP CODE

80202

(19) DAYTIME TELEPHONE NUMBER (include area code)

(303) 672-2926

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

0003-6059-53

(22) APPLICANT (TIN)

046141739

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

Domestic Section 214 Authority

(24A) PAYMENT TYPE CODE

CUT

(25A) QUANTITY

1

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

\$860.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, _____, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief

SIGNATURE _____

DATE _____

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER

EXPIRATION

☐ MASTERCARD

☐ VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described

SIGNATURE _____

DATE _____

SEE PUBLIC BURDEN ON REVERSE

FCC FORM 159

FEBRUARY 2000 (REVISED)

STAMP AND RETURN

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of)
)
TOUCH AMERICA, INC. (DEBTOR-IN-) WC Docket No. _____
POSSESSION),)
TRANSFEROR/SELLER)
)
and)
)
QWEST COMMUNICATIONS CORPORATION)
AND QWEST LD CORPORATION,)
TRANSFEREES/PURCHASERS)

Application for Authority to Purchase
Switching Equipment from Touch America

To Chief, Competition Policy Division, Wireline Competition Bureau

APPLICATION

Qwest Communications Corporation ("QCC") and Qwest LD Corporation ("QLDC") (jointly, "Qwest"), and Touch America, Inc. (Debtor-in-Possession) ("Touch America") (collectively, "Applicants"), pursuant to Section 214(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214(a), and Part 63 of the Commission's rules, 47 C.F.R. Part 63, hereby seek authority for Qwest to acquire certain ATM/frame relay switching equipment from Touch America.¹ Applicants request streamlined processing.

¹ While Applicants do not believe that the transaction discussed herein implicates the Commission's Part 63 transfer of control rules for domestic carriers, Applicants are nevertheless submitting the instant application at the request of Commission staff.

I. BACKGROUND/DESCRIPTION OF TRANSACTION

A. Parties to the Transaction

Touch America. Touch America is a Montana corporation headquartered in Butte, Montana. Touch America develops, owns and operates a fiber-optic network to provide its customers with broadband communications services, including data and video transport. Additional information is provided in Section II below.

Qwest. QCC and QLDC are both Delaware corporations headquartered in Denver, Colorado. QCC and QLDC offer domestic and international interexchange telecommunications services in all 50 states. QCC and QLDC are affiliates of Qwest Corporation, which is a Bell Operating Company subject to Section 271 of the Act and an incumbent local exchange carrier in its 14-state region, which includes Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming (the "in-region states"). QCC and QLDC both are Section 272 affiliates of Qwest Corporation, and are authorized to provide interLATA service to all in-region states. For all out-of-region states, QCC and QLDC have blanket Section 214 authority to offer interstate interexchange services. 47 C.F.R. § 63.01(a). QCC and QLDC are wholly-owned subsidiaries of Qwest Communications International, Inc. Other subsidiaries of QCII provide wireless service in Qwest's in-region states, and various wireline services throughout the United States. QCII and its affiliates maintain 47,000 employees, approximately 16.5 million access lines, 560,000 DSL customers, and more than 180,000 miles of fiber optic network capacity. Additional information about QCC and QLDC is provided in Section II below.

B. Description of the Transaction

On June 19, 2003, Touch America Holdings, Inc. ("TAH") and certain of its subsidiaries, including Touch America (collectively, the "TA Debtors"), filed voluntary petitions pursuant to Chapter 11 of the U.S. Bankruptcy Code to reorganize their business and financial structure. *See* Chapter 11 Case No. 03-11915-MFW et al. (Bankr. D. Del.). Prior to that date, QCII and various affiliates (collectively, "QCII"), and the TA Debtors, were parties to numerous agreements whereby QCII and the TA Debtors obtained various services from one another. Some of these agreements remain in effect today. Applicants have been negotiating the possible settlement of various disputes, claims and issues arising out of these ongoing contractual relationships and, on November 10, 2003, the parties entered into a broad settlement agreement covering a variety of issues. For purposes of the instant application, the parties to that transaction agreed that Qwest would enter into an agreement with the TA Debtors to purchase the latter's ATM/frame relay switches and related software and equipment.

Specifically, Qwest has agreed to purchase a number of ATM/frame relay switches from Touch America. Qwest is obtaining no customer accounts and none of Touch America's subscriber base as part of the transaction. The equipment Qwest intends to purchase will not be serving customers at the time Qwest acquires it, nor will Qwest use the equipment to offer service upon obtaining it. Rather, any existing TA customers selecting Qwest as their new carrier will be served (at least initially) via Qwest's *existing* facilities – not the facilities to be acquired from TA.

II. SECTION 63.04 INFORMATION

Following is the information responsive to Section 63.04 of the Commission's rules, 47 C.F.R. 63.04

(1) The name, address and telephone number of each applicant.

Qwest Communications Corporation and
Qwest LD Corporation
1801 California Street, #3800
Denver, Colorado 80202
Telephone: (303) 672-2926
Attn. Andrew Crain
FRN: 0003605953 (QCC) and 0007769458 (QLDC)

Touch America, Inc (Debtor-in-Possession)
130 North Main Street
Butte, MT 59701-9331
Telephone: (406) 497-5100
FRN: 0006213185

(2) The government, state, or territory under the laws of which each corporate or partnership applicant is organized.

Qwest Communications Corporation is a Delaware corporation

Qwest LD Corporation is a Delaware corporation.

Touch America is a Montana corporation

(3) The name, title, post office address, and telephone number of the officer or contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed.

If to QCC or QLDC: Andrew Crain
Qwest Services Corporation
1801 California Street, #3800
Denver, Colorado 80202
Telephone: (303) 672-2926
Fax: (303) 295-7049
Email: andrew.crain@qwest.com

with a copy to Kenneth D. Patrich
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037
Telephone: (202) 383-3342
Fax: (202) 783-5851
Email: kpatrich@wbklaw.com

If to Touch America: Jonathan S. Marashlian
The Helein Law Group, LLP
8180 Greensboro Dr., Suite 700
McLean, VA 22102
Telephone: (703) 714-1313
Fax: (703) 714-1330
Email jsm@thlglaw.com

- (4) **The name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten (10) percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one (1) percent).**

QCC and QLDC are "sister" companies, both wholly-owned direct subsidiaries of Qwest Services Corporation. The ultimate 10 percent or greater interest holders in QCC and QLDC are

Name	Philip F. Anschutz
Address	555 Seventeenth Street Denver, Colorado 80202
Citizenship	United States
Principal Business	Transportation, natural resources, real estate, professional sports, technology, entertainment, telecommunications
Percent Held	17 percent indirect interest in QCC and QLDC 100 percent direct interest in Anschutz Company

Name	Anschutz Company
Address	555 Seventeenth Street Denver, Colorado 80202
Citizenship	Delaware
Principal Business	Transportation, natural resources, real estate, professional sports, technology, entertainment, telecommunications
Percent Held	17 percent indirect interest in QCC and QLDC 17 percent direct and indirect interest in QCII

Name	Qwest Communications International Inc. (QCII)
Address	1801 California Street Denver, Colorado 80202
Citizenship	Delaware
Principal Business	Telecommunications
Percent Held	100 percent indirect interest in QCC and QLDC 100 percent direct interest in QSC

Name: Qwest Services Corporation (QSC)
Address: 1801 California Street
Denver, Colorado 80202
Citizenship: Colorado
Principal Business: Telecommunications
Percent Held: 100 percent direct interest in QCC and QLDC

- (5) **Certification pursuant to §§1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.**

By the signatures to the instant application, each party certifies that it is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

- (6) **A description of the transaction.**

See *supra* Section 1 B.

- (7) **A description of the geographic areas in which the transferor and transferee (and their affiliates) offer domestic telecommunications services, and what services are provided in each area.**

Touch America. Touch America currently provides private line, dedicated and dial-up Internet, and ATM/Frame Relay services to customers located in 15 states. Arizona, California, Colorado, Idaho, Illinois, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah, Washington, and Wyoming

Qwest. QCC and QLDC offer domestic and international interexchange telecommunications services in all states except Arizona. QCC and QLDC will offer such services in Arizona after the Commission's Order authorizing Qwest to provide interLATA services in that state becomes effective December 15, 2003.²

- (8) **A statement as to how the application fits into one or more of the presumptive streamlined categories in this section or why it is otherwise appropriate for streamlined treatment.**

² *Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, Memorandum Opinion and Order, WC Docket No. 03-194, FCC 03-309, ¶ (rel Dec. 3, 2003).

The instant application is appropriate for streamlined processing.³ Qwest is regulated as non-dominant in its provision of in-region interstate interexchange services.⁴ Qwest's share of the interstate, interexchange market remains less than 10 percent nationally, and as Qwest has only recently obtained Section 271 authorization to provide in-region interLATA service, its market share for the geographic areas affected by the transaction remains below 10 percent as well. The transaction described herein will not alter these facts in any way, as Qwest is principally obtaining raw equipment, and no customer accounts. To the extent that existing Touch America customers select Qwest as their service provider, any resulting new subscriber additions will not significantly increase Qwest's market share.

The Commission, moreover, has acknowledged that there is significant competition in the marketplace for the packet switching services provided via the facilities at issue here. In the *Triennial Review* order, the Commission found that:

³ While the application is not presumptively subject to streamlined processing, the Commission has determined that circumstances underlying a transaction may nonetheless warrant such treatment. See 47 C.F.R. § 63.04(a)(8); *Implementation of Further Streamlining Measures for Domestic 214 Authorizations*, Report and Order, 17 FCC Rcd. 5517, ¶ 34 (2002) (application not presumptively streamlined "may still be entitled to streamlined treatment under the case-by-case approach") In light of the Commission's "case-by-case" approach, and its holding that "dominant carriers will have an opportunity to show that their applications should receive streamlined treatment," *id.* ¶ 28, the recent Bureau statement that an application for "the purchase of in-region telecom facilities by an affiliate of an incumbent LEC ... is not appropriate for streamlined treatment" cannot be viewed as a *per se* rule – particularly where, as here, the equipment being acquired will not be placed into service. See Public Notice, *Domestic Section 214 Application Filed for Acquisition of Assets of Level 3 Communications, LLC by Centurytel Fiber Company III, LLC d/b/a LightCore*, WC Docket No. 03-209, DA 03-3155 (rel. Oct. 9, 2003).

⁴ See 47 C.F.R. §§ 61.3(y); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd 15756, ¶¶ 206-213 (1997) ("In-Region IXC Order").

[A] wide range of competitors are actively deploying their own packet switches, including routers and DSLAMs to serve both the enterprise and mass markets, and that these facilities are much cheaper to deploy than circuit switches. In fact, according to the BOC UNE Fact Report 2002, unrebutted in the record, competitive LEC deployment of packet switching has doubled since the UNE Remand Order, from 860 in 1998 to at least 1,700 in 2001. In addition, more than 55 competitive LECs have deployed packet switches in more than 200 different cities. In the top 100 MSAs, the average number of packet switches per MSA has grown by an average of nearly 150 percent since our last UNE review. The record also shows that several carriers maintain their own frame relay and ATM networks with AT&T, WorldCom, and Sprint each operating extensive, nationwide networks. In addition, competitive carriers lead incumbent LECs in the deployment of Gigabit Ethernet switches.⁵

Indeed, there are numerous alternative providers of these facilities and services in the affected states

Qwest's ILEC affiliation is not an appropriate basis upon which to preclude the Commission from considering the application pursuant to streamlined processing, given the minimal impact of the transaction on the domestic interexchange marketplace. Qwest's Section 271 authority for the markets at issue, and the fact that QCC and QLDC are both Section 272 affiliates of Bell operating company Qwest Corporation, resolve any competitive concerns that could arise as a result of the transaction.⁶ Indeed, in finding BOC interLATA affiliates non-dominant in the provision of in-region interexchange services, the Commission found "no reason to saddle the BOC interLATA affiliates with regulations that are not well-suited to prevent the risks associated with BOC entry into in-region, interstate, domestic, interLATA services."⁷

⁵ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 16978, ¶ 538 (2003).

⁶ See, e.g., *Application by Qwest Communications International Inc., for Authorization To Provide In-Region, InterLATA Services in Minnesota*, Memorandum Opinion and Order, 18 FCC Rcd. 13323, ¶¶ 62-65 (2003) ("safeguards of section 272 seek to ensure that BOCs compete on a level playing field").

⁷ *In-Region IXC Order*, 12 FCC Rcd 15756 at ¶ 92.

Consistent with this principle, imposing burdensome application procedures here, given the absence of competitive risks, would not be appropriate.

Should the Commission determine that streamlined treatment should not apply, Applicants respectively request an expedited comment cycle with comments due within 14 days of Public Notice, with reply comments due 7 days thereafter.

(9) Identification of all other Commission applications related to the same transaction.

Touch America filed a discontinuance of service application pursuant to Section 214 of the Act on December 8, 2003. See Public Notice, WC Docket No. 03-259, DA 03-4058 (rel. Dec. 19, 2003).

(10) A statement of whether the applicants are requesting special consideration because either party to the transaction is facing imminent business failure.

As noted above, Touch America is presently in Chapter 11 bankruptcy.

(11) Identification of any separately filed waiver requests being sought in conjunction with the transaction.

None.

(12) A statement showing how grant of the application will serve the public interest, convenience and necessity, including any additional information that may be necessary to show the effect of the proposed transaction on competition in domestic markets.

Grant of the instant application will serve the public interest, convenience and necessity. Grant of the application will facilitate the execution of a transaction which the bankruptcy court has deemed appropriate. Moreover, as noted above, grant of the application will have no adverse impact on competition in domestic markets and the transaction would have no significant impact on Qwest's market share. Finally, Touch America customers affected by the transaction have been afforded notice of the company's discontinuance of service in accordance with Section 63.71 of the Commission's rules.

III. CONCLUSION

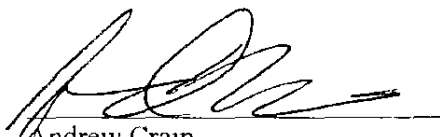
For the foregoing reasons, Applicants respectfully request that the Commission grant the instant application.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION
QWEST LD CORPORATION

TOUCH AMERICA, INC. (DEBTOR-IN-POSSESSION)

By


Andrew Crain
Authorized Representative
1801 California Street, 49th Floor
Denver, Colorado 80202
(303) 672-2975

By:

Jonathan S. Marashlian, Esq.
The Helein Law Group, LLP
Authorized Representative
8180 Greensboro Drive, Suite 700
McLean, VA
(703) 714-1313

December 22, 2003

Grant of the instant application will serve the public interest, convenience and necessity. Grant of the application will facilitate the execution of a transaction which the bankruptcy court has deemed appropriate. Moreover, as noted above, grant of the application will have no adverse impact on competition in domestic markets and the transaction would have no significant impact on Qwest's market share. Finally, Touch America customers affected by the transaction have been afforded notice of the company's discontinuance of service in accordance with Section 6371 of the Commission's rules.

III. CONCLUSION


For the foregoing reasons, Applicants respectfully request that the Commission grant the instant application.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION
QWEST LD CORPORATION

TOUCH AMERICA, INC. (DEBTOR-IN-POSSESSION)

By: _____
Andrew Crain
Authorized Representative
1801 California Street, 49th Floor
Denver, Colorado 80202
(303) 672-2975

By:  _____
Jonathan S. Marashlian, Esq.
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December ~~22~~, 2003